

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 28, 2001

GSBCA 15428-TRAV

In the Matter of JOHN W. CASTELLANI

Dr. John W. Castellani, Natick, MA, Claimant.

Lt. Col. Joseph R. Emery, Chief, Finance and Accounting Division, Headquarters, United States Army Medical Command, Fort Sam Houston, Texas, appearing for Department of the Army.

NEILL, Board Judge.

Dr. John Castellani, a research physiologist in the employ of the United States Army Medical Command, asks that we review a determination of his agency that he is not entitled to reimbursement of a lodging expense in excess of that authorized under the applicable per diem rate. We affirm the agency's determination.

Background

In May 2000, Dr. Castellani traveled to Indianapolis, Indiana, to attend a scientific conference. He and an office colleague, who also planned to attend the conference, arranged to share a hotel room at the conference hotel in order to reduce the Government's costs of having them attend the conference. It was their plan to split between them the daily charge of \$149. A day before his colleague was scheduled to arrive at the conference center, Dr. Castellani learned that the colleague would be delayed by one day. We are told that the cause of the delay was "unexpected personal reasons that needed immediate attention."

Believing that lodging within the per diem rate is usually impossible to find at the last minute, Dr. Castellani deemed it more prudent not to seek alternate lodging for one night. He also considered that staying at the hotel near the conference site would be more in keeping with the Government's purpose in sending him to the conference since it would permit him to interact with his fellow scientists. He, therefore, retained the room reserved for him and his colleague and paid the full charge of \$149 for the first day.

The agency refuses to pay Dr. Castellani his actual lodging cost of \$149 for the first day of the conference. Instead, it has limited reimbursement to \$65, the maximum allowable lodging cost in effect in the Indianapolis area.

Discussion

Dr. Castellani, as a civilian employee of the Federal Government, is subject to the Federal Travel Regulation (FTR). As a civilian employee of the Department of Defense (DoD), he is also subject to DoD's Joint Travel Regulations (JTR), which serve as a departmental supplement to the FTR. The FTR and the JTR have similar provisions regarding per diem allowances paid to civilian employees for lodging and meal costs incurred while traveling on official business.

The most common form of per diem is that which is referred to as "lodgings-plus per diem." Under this method, the employee receives a fixed allowance for meals and miscellaneous expenses and is reimbursed for the actual lodging cost, not to exceed the maximum rate established under regulation for the temporary duty (TDY) location. 41 CFR 301-11.100 (2000) (FTR 301-11.100); JTR C4553. In Dr. Castellani's case, this was the form of per diem authorized. Since the maximum lodging rate approved for the Indianapolis area is \$65, the agency denied reimbursement for actual lodging expenses in excess of this amount.

There are, of course, provisions in both the FTR and the JTR which permit employees to receive reimbursement for actual expenses in excess of the per diem rates normally applied to lodgings-plus per diem. Under the JTR, this form of per diem is referred to as the actual expense allowance (AEA).¹ AEA is authorized when, owing to extraordinary circumstances, the actual and necessary expenses of the employee exceed the normally allowable maximums for per diem allowance. JTR C4600. Even under this form of per diem, however, there are limits, albeit higher, on the reimbursement of actual expenses. *Id.* C4602. The authorization of AEA per diem is not made lightly. Requests are generally submitted before travel is performed, although approval can sometimes be granted after completion of travel. All requests must be well documented as to the pertinent facts and the reasons why the normal per diem allowances are not deemed to be sufficient to meet the traveler's necessary expenses. *Id.* C4603.

The agency obviously is not prepared to authorize AEA per diem for Dr. Castellani in this case. Its position is that Dr. Castellani had a duty to seek less expensive lodging once he learned that his colleague would be arriving a day late. The agency report points to the absence of any evidence that other lodging was not available within the per diem rate. The claimant has simply stated that finding lodging at the last minute is "usually impossible." AEA is justified only when actual and necessary expenses are found to be in excess of per diem maximums. In the absence of any data regarding the availability of alternative lodging, it is impossible to determine whether the cost incurred in excess of the normally allowable maximum rate for lodging was, in fact, necessary.

The JTR expressly state that reimbursement for lodging expenses may not exceed actual lodging costs up to the applicable maximum amount. JTR C4553-C.1. Although these maximums are considerably higher for AEA per diem, that form of per diem must first be

¹Similar provisions regarding the actual expense method for per diem appear in subpart D of part 301-11 of the FTR. See Harry Nadal, GSBCA 15416-TRAV (June 5, 2001). Nevertheless, because the claimant is a DoD employee and subject to the JTR, we will restrict our discussion here to provisions found in that set of regulations.

authorized by the agency before a claimant may be reimbursed actual costs in excess of the usual per diem maximums. We agree with the agency that in this case authorization of AEA would be inappropriate. Accordingly, by regulation, Dr. Castellani is precluded from being reimbursed any actual cost for lodging beyond the normally allowable maximum rate in effect at his TDY location.

It is well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor this Board has the authority to waive the applicability of travel statutes or regulations for any individual federal employee who is subject to them. E.g., Fred A. Borakove, GSBCA 15379-RELO (Apr. 19, 2001); Mark Hummel, GSBCA 15205-RELO, 00-1 BCA ¶ 30,901; Tanya Cantrell, GSBCA 15191-RELO, 00-1 BCA ¶ 30,894; Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998); Defense Intelligence Agency Employee, GSBCA 14745-RELO, 99-1 BCA ¶ 30,117 (1998). The claimant here has indicated no authority, nor are we aware of any, which in circumstances such as those described in his case would justify waiving the regulations which preclude the agency from reimbursing him as requested. The agency's determination denying these claims is, therefore, affirmed. The claim is denied.

EDWIN B. NEILL
Board Judge